

REMARKS

By this amendment, claims 1-5 and 7-11 are pending, in which claims 1 and 7 are currently amended, and no claims are canceled, withdrawn from consideration, or newly presented. No new matter is introduced.

The Final Office Action mailed June 8, 2009 rejected claims 1 and 7 under 35 U.S.C. § 112, second paragraph, and rejected claims 1-5 and 7-11 under 35 U.S.C. § 102(e) as anticipated by *Lee et al.* (US 2002/0053058).

Applicants gratefully acknowledge the withdrawal of the objections to the drawings and claims.

In response to the rejection of claims 1 and 7 under 35 U.S.C. § 112, second paragraph, Applicants have amended claims 1 and 7 to remove the phrase “instead of a redundant data block” and to specify “determining the rate of the incorrectly received first data blocks” occurs “without error correction.” The removal of “instead of a redundant data block” makes clear that both the first data block and a redundant data block are transmitted, and the insertion of “without error correction” clarifies that the error rate is determined based on the retransmission of the first data block rather than on the transmission of the redundant data block.

Regarding the assertion that the phrase “redundant data block” in lines 11, 14, and 16 of claim 1 and in lines 6, 7, and 10 of claim 7 lacks antecedent basis, the identical language appears in line 3 of claim 1 and line 4 of claim 7, thereby providing antecedent basis within the claims. Furthermore, the phrase “redundant data block” appears throughout the specification. In particular, with respect to the claimed embodiment, the claim language can be found on page 12, lines 14 and 19, page 13, lines 1, 5, and 7-8, and page 16, lines 9-10. Accordingly, the

specification provides antecedent basis for the phrase “redundant data block.” Therefore, the rejection under 35 U.S.C. § 112, second paragraph, has been overcome.

The Office Action asserts on pages 3-4 that claims 1 and 7 have not been examined on the merits because of the indefiniteness described in the rejection under 35 U.S.C. § 112. However, the Office Action (page 4) includes claims 1 and 7 in the statement of the rejection under 35 U.S.C. § 102. Further, the explanation given for claim 7 (on page 5) is that it “is rejected for the same reasons as per claim 1.” Therefore, it is unclear whether or not claims 1 and 7 are rejected. In addition, the Office Action provides an interpretation of claims 1 and 7. It is unclear why that interpretation was not used to examine the claims on the merits. Also, since claims 1 and 7 are the same as dependent claims 6 and 12 prior to the last amendment, and claims 6 and 12 were rejected on the merits in the last Office Action, it is unclear why claims 1 and 7 are now too indefinite to examine on the merits.

Additionally, the Office Action rejects all of the dependent claims under 35 U.S.C. § 102. Yet, the dependent claims include all of the limitations of the independent claims. If claims 1 and 7 cannot be examined, it is unclear how the dependent claims can be examined on the merits. The status of claims 1-5 and 7-11 with respect to the rejection under 35 U.S.C. § 102 is thus unclear, and clarification is respectfully requested.

Furthermore, as stated above, claims 1 and 7 are identical to prior dependent claims 6 and 12, which were not previously rejected as indefinite and which were examined on the merits in the prior Office Action. Therefore, the new ground of rejection was not necessitated by amendment, and the rejection was made final prematurely. See MPEP § 706.07(a). Applicants, therefore, respectfully request withdrawal of the finality.

With regard to the anticipation rejection of claims 1-5 and 7-11, Applicants maintain that *Lee* fails to disclose retransmitting the first data block and determining the error rate without error correction in response to a request for a redundant data block and additionally transmitting a further, redundant data block, as positively recited in claims 1 and 7, and, thus, in all of claims 1-5 and 7-11. *Lee* discloses two different types of requests which are alternatives for each other. The first type of request, NACK1, is a request for a different packet. In response to NACK1, a different packet is transmitted. There is no disclosure of the first data block being retransmitted in response to NACK1. The second type of request, NACK2, is a request for the first data block. In response to NACK2, the first data block is retransmitted. The retransmission of the first data block is not in response to a request for a redundant data block. Further, since NACK2 occurs under different circumstances than NACK1, and, therefore, does not occur at the same time as NACK1, the first data block and a redundant data block are not both transmitted in response to a request for a further, redundant data block, as is recited in all of the claims.

“It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim.” *In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). *See also Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). Since *Lee* fails to disclose retransmitting the first data block in response to a request for a further, redundant data block and additionally transmitting a further, redundant data block, *Lee* cannot anticipate claims 1-5 and 7-11. Accordingly, Applicants request withdrawal of the anticipation rejection.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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